



**Statement of Case - Rebuttal**  
**Petersham Nurseries**

May 2024





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## 1.0 INTRODUCTION

- 1.1 This Rebuttal is submitted on behalf of the Appellant in response to the Statement of Case issued by London Borough of Richmond upon Thames (LBRuT) (the Council) on 15<sup>th</sup> April 2024 and the receipt of Third-Party Representations received to date.
- 1.2 In preparing this Rebuttal, we have not addressed every point submitted as evidence by the Council and Third Parties, but this does not mean that we agree with any point by virtue of omission. Instead, this Rebuttal focusses upon clear misinterpretations of the facts and points which require clarification and should be given due consideration in the decision-making process.
- 1.3 This Rebuttal should be read in conjunction with the Appellant's Statement of Case.

## 2.0 PLANNING POLICY

- 2.1 The Appellant notes that there are several inconsistencies within the Council's documents in relation to the planning policies, which are relevant to this appeal.
- 2.2 The Enforcement Notice Report does not allege non-compliance with Policy LP10 (Local Environment Impacts, Pollution and Land Contamination) of the Local Plan - and indeed, does not include Policy LP10 within the list of Development Plan policies that are applicable to the site at paragraph 6.1.
- 2.3 The Council's Statement of Case now alleges non-compliance with Policy LP10 at paragraph 2.23.
- 2.4 Regarding the Draft Publication Version Local Plan, the Enforcement Notice Report does not allege non-compliance with Policy 46 (Amenity and Living Conditions) or Policy 53 (Local Environmental Impacts) - and does not include these policies within the list of Development Plan policies that are applicable to the site at paragraph 6.1.
- 2.5 The Council's Statement of Case now alleges non-compliance with Policies 46 and 53 at paragraphs 2.15, 6.11, and 7.1 of the Statement of Case.
- 2.6 The Council's Statement of Case cites non-compliance with Policy 35 (Green Belt, Metropolitan Open Lane, and Local Green Space) of the Draft Publication Version Local Plan. It is relevant to note that within the agreed Statement of Common Ground, the Council confirm that only limited weight is to be applied to Policies 35 and 53, and moderate weight is to be applied to Policy 46.

### 3.0 APPEAL UNDER GROUND A

#### Incorrect Plan

- 3.1 Within the Council's Statement of Case, Figure 4 shows an incorrect area for outdoor seating. The correct areas are shown in the agreed plan submitted to the Inspector with the Statement of Common Ground.

#### Inappropriate Use within Metropolitan Open Plan (MOL)

- 3.2 The Council's Statement of Case includes conflicting references to the concept of "inappropriate development" and it is unclear whether the Council considers the use of the site at Petersham Nurseries to comprise inappropriate development within the MOL.
- 3.3 Paragraph 2.4 of the Council's Statement of Case states [our emphasis]:

*"Paragraph 152 of the NPPF advises that inappropriate development is, by definition, harmful to the Green Belt [MOL] and should not be approved except in Very Special Circumstances (VSC). On this point, it is relevant that the underlying development at this site (mixed use as a garden centre and café / restaurant) is 'inappropriate development - the fact that it benefits from planning permission and is lawful does not change this underlying point. Further information can be found in the officer report for the temporary mixed use and permanent mixed use of the site attached to this statement as Appendix 16 and 17. Any extension of this use is an extension to inappropriate development, even if not in itself development, and needs to be considered in this context when evaluating the harm caused by the increase in hours..."*

- 3.4 Paragraph 6.10 of the Council's Statement of Case states [our emphasis]:

*"The notice does not attack the lawful use of the site as garden centre and café/restaurant because planning permission has already been granted this use. Therefore, the notice does not relate to inappropriate development in the Green Belt. However, it relates to the harm caused by breach of conditions NS04 and NS05 and the impact these are having on the amenity and living conditions of neighbouring residential properties and the urbanising effect it causes which is detrimental to the character and openness of the (MOL) arising from the use of the restaurant/ café for longer hours and over extended area."*

- 3.5 The Council's Statement of Case addresses the designation of the site within the MOL and states at paragraph 2.14:

*"The appeal site has been designated as part of the MOL to prevent urban sprawl and keep it in open use."*

- 3.6 These seem to be two separate points (preventing urban sprawl and whether the site is in open use). The Appellant acknowledges that the first purpose of the MOL is to prevent urban sprawl of large built-up areas and has demonstrated within the Statement of Case that the self-contained nature of this previously developed site means that any development within the Nurseries will not give rise to unrestricted sprawl.

- 3.7 The Council's reference to the site being in "open use" is fundamentally incorrect. Petersham Nurseries is an established developed site in commercial use, with numerous buildings and structures. The site is also self-contained and enclosed with a clear property boundary. It would therefore be unreasonable to conclude that the site is in an "open use". It is important to acknowledge this context when considering the proposed development in the context of the MOL.

#### Tranquillity

- 3.8 The Council's Statement of Case makes repeated reference to the "tranquil environment" (paragraphs 2.13, 2.15, 2.23, 2.24 and 6.11). It is unclear where this reference has come from.
- 3.9 The Ham and Petersham Neighbourhood Plan refers to the "pastoral tranquillity" of the Petersham Meadows themselves and the Local Plan refers to the "relative tranquillity" of the Borough's open spaces; however, there is no suggestion that the wider built-up areas of Petersham are also tranquil.
- 3.10 The Council has provided no evidence to demonstrate the tranquillity of the area and no formal studies of tranquillity have been undertaken.
- 3.11 It is noted that the National Planning Practice Guidance relating to Noise confirms:

*"For an area to justify being protected for its tranquillity, it is likely to be relatively undisturbed by noise from human sources that undermine the intrinsic character of the area. It may, for example, provide a sense of peace and quiet or a positive soundscape where natural sounds such as birdsong or flowing water are more prominent than background noise, e.g. from transport."*

- 3.12 The acoustic environment at Petersham Nurseries is subject to ambient noise from several human sources, including (but not limited to) aircraft taking off and landing at Heathrow Airport, traffic on the surrounding road network and commercial and residential uses in the surrounding area (including the lawful operation of the site itself). This will be further demonstrated through the noise assessment submitted in evidence.
- 3.13 It is clear that the area does not meet the definition of tranquillity as set out in the NPPG and, therefore, the Council's assertion that the proposed extension of opening hours affects the tranquillity of the area is unfounded.

#### Evidence of Complaints provided by the LPA

- 3.14 At paragraph 2.23 of the Council's Statement of Case, the Council has suggested there have been five complaints. Further details of these complaints have now been provided.
- 3.15 The Appellant would comment as follows:

Date of Complaint	Appellant Comment
25 <sup>th</sup> April 2020	<p>The Appellant has no record of an event on this date.</p> <p>Petersham Nurseries was closed at this time, as it was lockdown during the Covid-19 pandemic. The Council have confirmed that two noise team officers and two police officers attended the site on this date and witnessed noise from the site but were unable to gain access (presumably as the Nurseries were closed).</p> <p>Whatever this incident was, it is not connected to the operation of the Nurseries, as the business was closed.</p>
15 <sup>th</sup> August 2022	<p>The Appellant has no record of an event on 15<sup>th</sup> August 2022 and the Council have confirmed that no officer was sent to investigate, so there are no details available.</p> <p>15<sup>th</sup> August was a Monday, and the Nurseries are closed on Mondays.</p> <p>If the complaint relates to an event which took place in the preceding days, then it is noted that there was an event at Ham Polo Club on 14<sup>th</sup> August 2022 (HPA Young England Indian Army Trophy), which could have been the source of any disturbance.</p>
21 <sup>st</sup> June 2023 <i>(Note that 2x complaints relate to this one date)</i>	<p>We enclose correspondence with residents relating to this event (<b>Appendix 1</b>) - noting that the resident of 2 Rutland Drive (whose property is 6m from the site boundary) confirms that the music did not adversely impact them.</p>
27 <sup>th</sup> June 2023	<p>We enclose correspondence confirming that residents were aware this event was taking place.</p>

- 3.16 From the evidence provided by the Council, we note that no formal action was taken by the Council following receipt of these complaints.
- 3.17 No contact was made with Petersham Nurseries by the Council in relation to these complaints - or by the police, in respect of the 20 April 2020 complaint.

### **Socio-Economic Benefits**

- 3.18 The Council does not acknowledge the socio-economic benefits of Petersham Nurseries, or conversely the adverse impacts which would result from upholding the Enforcement Notice.
- 3.19 The Nurseries result in significant economic benefits, and the contribution of the business towards employment and the local economy are a key planning consideration, which should hold significant weight.
- 3.20 The Council does not acknowledge the beneficial impact of the Nurseries upon tourism within Richmond, despite confirming that Petersham Nurseries is a highly successful tourist attraction that draws visitors to the area.
- 3.21 The Council also pays no regard to the social benefits of Petersham Nurseries and their role in the local community, with numerous charitable events and contributions.
- 3.22 Evidence of support for Petersham Nurseries from local businesses and organisations, politicians, charities, staff, patrons, and members of the local community will be provided in evidence, and indeed is already evident in many of the Third-Party representations received as part of the appeal process.



**4.0 THIRD PARTY REPRESENTATIONS**

- 4.1 This section of the Rebuttal considers the Third-Party Representations received to date. The Appellant is pleased to note that many of these are supportive, confirming the positive impact of the Nurseries and their relationship with the local community.
- 4.2 This section focusses on the points raised in the representations received and confirms the Appellant’s position on these, noting where further assessments and information is to be provided in evidence.
- 4.3 A map that plots the Third-Party Representations in the immediate locale is provided at **Appendix 2**.

**Summary of Third-Party Representations**

- 4.4 A summary of Third-Party Representations is provided in the table below.

Name / Company	Supports / Objects	Summary of Representation
163 Petersham Road	Objects	No specific objection.  Simply agrees with the Enforcement Notice.
Rosebank (x2 representations made)	Objects	<ul style="list-style-type: none"> <li>• Increased <b>traffic</b> activity - from customers, food / drink suppliers, maintenance vehicles, and refuse / waste collections.</li> <li>• Increased <b>noise</b>.</li> <li>• Loss of <b>privacy</b>.</li> <li>• Adverse effect on environment - both to wildlife (<b>ecology</b>) and the <b>MOL</b>.</li> <li>• <b>Light</b> pollution.</li> <li>• <b>Safety</b> concerns (linked to access / traffic).</li> <li>• Contends that the operations have <u>not</u> been continuous for <b>ten years</b>.</li> </ul> In sum, the scale of the enterprise is far too big for its location in a conservation area and area designated MOL.
2 Rutland Drive	Supports	Confirms <b><u>no impact</u></b> from PN by way of evening operations.  Evening openings considered beneficial - owing to encouraging visitors, boosting employment, and providing a wonderful setting.

<p>Mr Geoff Bond (on behalf of Ham and Petersham Association and Amenities Group)</p>	<p>Objects</p>	<ul style="list-style-type: none"> <li>• Adverse effect on <b>MOL</b>.</li> <li>• Increased <b>traffic</b> activity - from customers, food / drink suppliers, maintenance vehicles, and refuse / waste collections.</li> <li>• Increased <b>noise</b> and disturbance.</li> <li>• Harm to <b>heritage</b> assets.</li> </ul>
<p>Lord Zac Goldsmith Ham Gate Avenue</p>	<p>Supports</p>	<p>As the former MP for Richmond Park and North Kingston (2010-2019), Lord Zac Goldsmith writes of the economic benefits of Petersham Nurseries.</p> <p>He writes that the evening operations do not cause discernible harm to neighbours or the MOL.</p> <p>Petersham Nurseries is a morally upstanding business - with deep ties into the community and local charities.</p>
<p>Dr Alison Greenwood Dose of Nature</p>	<p>Supports</p>	<p>As a local resident for 30+ years, Dr Alison emphasises the value of Petersham Nurseries to the local community.</p>
<p>Petersham Lodge, River Lane (x2 representations made)</p>	<p>Objects</p>	<ul style="list-style-type: none"> <li>• Increased <b>traffic</b> activity - from customers, food / drink suppliers, maintenance vehicles, and refuse / waste collections.</li> <li>• Increased <b>noise</b>.</li> <li>• Loss of <b>privacy</b>.</li> <li>• Adverse effect on environment - both to wildlife (<b>ecology</b>) and the <b>MOL</b>.</li> <li>• <b>Light</b> pollution.</li> </ul>
<p>15 Kings Road</p>	<p>Objects</p>	<ul style="list-style-type: none"> <li>• Increased <b>traffic</b> activity - from customers, food / drink suppliers, maintenance vehicles, and refuse / waste collections.</li> <li>• Adverse effect on environment - both to wildlife (<b>ecology</b>) and the <b>MOL</b>.</li> </ul>
<p>16 Arlington Road</p>	<p>Supports</p>	<p>Confirms <b>no impact</b> from PN by way of evening operations.</p>

<p><b>Mr Serge Lourie</b> 59 Burlington Avenue</p>	Supports	<p>Support from a long-standing local resident; a former councillor from 1982-2010; a former member of the Planning Committee; and former Leader and Deputy Leader of the Council for nine years.</p> <p>The economic benefits to the borough in terms of employment and to the Visitor Economy, which is the main economic driver of Richmond upon Thames, far outweigh any damage caused to local residents in the immediate vicinity of Petersham Nursery.</p>
<p><b>Ms Emily Perry (on behalf of HAYE FARM Organic Ltd)</b></p>	Supports	<p>Confirms that the revenue generated from Petersham Nurseries constitutes over 35% of Haye Farm's annual turnover.</p>
<p><b>Sandpits Cottage, Sandpits Road</b></p>	Objects	<ul style="list-style-type: none"> <li>• Increased <b>traffic</b> activity - from customers, food / drink suppliers, maintenance vehicles, and refuse / waste collections.</li> <li>• Increased <b>noise</b>.</li> <li>• Decreased <b>air quality</b>.</li> </ul>
<p><b>184 Petersham Road</b></p>	Supports	<p>The economic benefits far outweigh any damage caused to local residents in the immediate vicinity of Petersham Nurseries.</p>
<p><b>Mrs Sarah Tippet</b> 5 Sandy Lane, Richmond</p>	Supports	<p>Support from former Local Councillor for Ham, Petersham and Richmond Riverside Ward (2014-2018) and also sat on the Planning Committee.</p> <p>Confirms <b><u>no impact</u></b> from PN by way of evening operations.</p>
<p><b>Dr Michael Nigro</b></p>	Objects	<ul style="list-style-type: none"> <li>• Increased <b>noise</b> and disturbance.</li> </ul>
<p><b>Greystones Sudbrook Lane, Petersham</b></p>	Supports	<p>Confirms that occasional evening openings, which are well managed, are not a problem.</p>

## Response to Third-Party Objections

- 4.5 The issues raised in the representations objecting to the evening operations and extended seating area at Petersham Nurseries have been summarised in the table below, with the Appellant’s response provided for each issue (where relevant):

Theme of Objection	Rebuttal
<p><b>Traffic</b></p>	<p>There are existing traffic movements in the local vicinity (most not associated with Petersham Nurseries), which form part of the character of this area.</p> <p>It is noted that the Evening Management Plan includes several measures to limit the number of vehicle movements, including:</p> <ul style="list-style-type: none"> <li>- discouraging customers from driving and advising them of the taxi drop off/pick up location to avoid neighbouring roads and</li> <li>- restricting access and parking along Church Lane, away from residential properties.</li> </ul> <p>Traffic surveys will be conducted and presented in evidence to demonstrate that the vehicle movements associated with the evening operation of Petersham Nurseries have a minimal impact on the operation of the road network and local environment.</p>
<p><b>Noise / Disturbance</b></p>	<p>The current acoustic environment of the area is subject to ambient noise from several sources, including (but not limited to) aircraft taking off and landing at Heathrow Airport, traffic on the surrounding road network and commercial and residential uses in the surrounding area.</p> <p>Noise monitoring will be conducted and presented in evidence to demonstrate both the ambient noise levels and noise emissions from the evening restaurant operation on sensitive receptors (including neighbouring residential properties). It is anticipated that the monitoring will demonstrate that the evening operation of Petersham Nurseries will not cause an adverse impact on these receptors.</p>
<p><b>Metropolitan Open Land (MOL)</b></p>	<p>The proposed development is not anticipated to result in any adverse impacts on the character of openness of the MOL in terms of noise, traffic, or lighting impacts. This will be demonstrated in evidence with relevant monitoring and assessments.</p> <p>It has already been agreed that there is no spatial harm caused to the MOL. The openness of the MOL (both spatially and visually) will therefore be preserved.</p>
<p><b>Character and Views</b></p>	<p>The proposal does not introduce any additional built form and indeed, the Council have already confirmed there is no spatial impact.</p> <p>Notwithstanding this, the Appellant has engaged a landscape consultant to prepare an assessment of the landscape character and the impact of the Nurseries in key views from the surrounding area. This will be submitted in evidence.</p>
<p><b>Ecology</b></p>	<p>The Appellant has engaged an ecologist, who will review the available online records relevant to the site, identify any potential impacts from the extended operation of Petersham Nurseries and recommend mitigation measures, if required. A technical ecology statement will be provided in evidence.</p>

<p><b>Light</b></p>	<p>The Appellant has engaged a lighting consultant to assess potential impacts on the MOL, and to ensure that the lighting design for the Nurseries complies with the relevant standards and recommendations. A lighting impact assessment will be undertaken, and a mitigation plan prepared (if required) which will be presented in evidence.</p>
<p><b>Air Quality</b></p>	<p>The Appellant has engaged an Air Quality Consultant to undertake both a quantitative assessment of the likely air quality impacts and odour from the café / restaurant activity.  This will involve comparing possible pollutants against relevant air quality objectives / impact guidance, to determine whether there is any detriment to amenity - or if mitigation measures are required.</p>
<p><b>Heritage</b></p>	<p>As appended to the Statement of Common Ground, Portico Heritage have conducted a high level heritage statement, which concludes that the operation forms part of the character of the area and extended opening hours for the café/restaurant will not detrimentally alter that character - particularly when the Nurseries are entitled to open for those hours anyway - continuing the process of deliveries of plants, supplies and equipment as well as retail activity.  A further, detailed Heritage Impact Assessment will be undertaken which will be provided in evidence. In particular, this will consider the alleged impacts to the Grade II* Listed St Peters Church.</p>

<p><b>Safety &amp; Privacy</b></p>	<p>The Appellants are committed to adhering to a stringent Evening Management Plan (see Appendix 11 of the Statement of Case), which is reviewed on an annual basis (as required by condition of the Premises Licence) and includes the following measures (but not limited to):</p> <ul style="list-style-type: none"> <li>• A minimum of 2x parking marshals are on duty from 17:00 until the last patron leaves the premises.</li> <li>• Supper Clubs are attended only by guests with an advance reservation. Travel arrangements are therefore suggested and agreed with guests in advance.</li> <li>• Guests are collected from their once their taxi has arrived for a swift departure.</li> <li>• All vehicles arriving are advised by the parking marshals to switch off vehicle lights and engines.</li> <li>• Employee incentives are used to encourage staff to travel to work via means other than by car.</li> <li>• Guests are asked to depart respectfully no later than 23:00.</li> <li>• Noise mitigation forms have been introduced to all staff to sign and agree to strict adherence to the noise mitigation policy in the form. This includes no use of mobile phones, no smoking, walking only in groups of four or under, until reaching Petersham Road.</li> </ul> <p>It is considered that this Evening Management Plan successfully manages and mitigates any concerns associated with safety and privacy (of guests and neighbours).</p> <p>Following the completion of the relevant assessments and studies noted above, the Evening Management Plan will be updated to include further mitigation measures if required.</p>
<p><b>10-Year Operation</b></p>	<p>The extension of evening hours / operations and seating areas has taken place for over a 10-year period. Indeed, an application to vary condition NS04 (hours of use) of LPA ref. 08/4312/FUL to include opening between 19:00 and 23:00 on Thursday, Friday and Saturday evenings was submitted to the Council in 2010 but was withdrawn on 11 August 2011 (LPA ref. 10/2914/VRC).</p> <p>Whilst the application was not determined, an officer’s report had been prepared (see Appendix 5), which raised concerns regarding alleged impacts because of impact on the MOL and residential amenity. The report notes that evening restaurant openings have occurred for at least two years (which would extend to 15 years prior to the current day).</p> <p>Further evidence that the evening openings and operational areas have been occurring on a continuous basis for more than 10-years is enclosed with the Statement of Case at Appendix 15. This will be discussed in more detail in evidence.</p>



## Appendix 1 - Email Correspondence



**Fwd: FW: APP/L5810/C/24/3339372 Petersham Nurseries nuisance details**

1 message

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**From:** Tamara Benjamin <xxxxxxxxxxxxxxxxxxxxxxxx>  
**Sent:** Saturday, June 24, 2023 5:56 AM  
**To:** Graham Ball <xxxxxxxxxxxxxxxxxxxxxxxx>; Gaby Flannery <xxxxxxxxxxxxxxxxxxxxxxxx>; Daniel Simon <xxxxxxxxxxxxxxxxxxxxxxxx>; Michael Nigro <xxxxxxxxxxxxxxxxxxxxxxxx>; Laurence <xxxxxxxxxxxxxxxxxxxxxxxx>  
**Subject:** Fwd: Wednesday Evening Event

Good Morning All,

I just wanted to let you know that I popped round to talk to Francesco and Paula (restaurant manager) about the event that they had on Wednesday and below are all of her details.

To be honest, I know that we could hear music, but we didn't think that it was all that bad and I believe that it did finish when she states it did and it seems as though they obtained a licence.

I did ask them to give us a little advance warning of any future events and they said that they would. In fact, they are having another event on Tuesday. This event will also have an acoustic Jazz Trio and they will be playing a few sets between 6pm and 11pm.

Thanks,  
Tamara.

-----  
Tamara Benjamin  
Mobile: xxxxxxxxxxxxxxxxxxxxxxxx  
Email: xxxxxxxxxxxxxxxxxxxxxxxx

Begin forwarded message:

**From:** Paula Passos Carr <xxxxxxxxxxxxxxxxxxxxxxxx>  
**Date:** 23 June 2023 at 12:16:34 BST  
**To:** Tamara Benjamin <xxxxxxxxxxxxxxxxxxxxxxxx>  
**Cc:** Annaliese Hughes <xxxxxxxxxxxxxxxxxxxxxxxx>, Events <xxxxxxxxxxxxxxxxxxxxxxxx>, Francesco Gervasi <xxxxxxxxxxxxxxxxxxxxxxxx>  
**Subject:** Wednesday Evening Event

Dear Tamara,

I hope this email finds you well.

Following our conversation yesterday, I would like to assure you that the musicians that played at our event last night were an acoustic band.

We have been fully committed to strengthening our relationship with our neighbours, and we are dedicated in taking all steps to prevent any disturbance that could potentially jeopardise this relationship.

As promised, I am sending below further information about the band that was subcontracted by the event organisers.

Here is the Website of the Dixie Ticklers: [The Ticklers \(theticklersofficial.com\)](http://theticklersofficial.com).

Despite not specifically saying on their website. They are an acoustic only band when performing at Petersham Nurseries as the agreement we have with them and have followed this rule at past events both during the day and in the evening.

The Band played three x 45 minute sets, at 7.45pm outside under the pergola, 9pm (inside the Greenhouse) and 10pm (inside the Greenhouse).

Music was stopped by 10.45/50pm, and guests departed at 11pm in minibuses as organised by the external event organisers.

We obtained a TENs licence from the Council for last night's event.

Let me know if you require any more information.

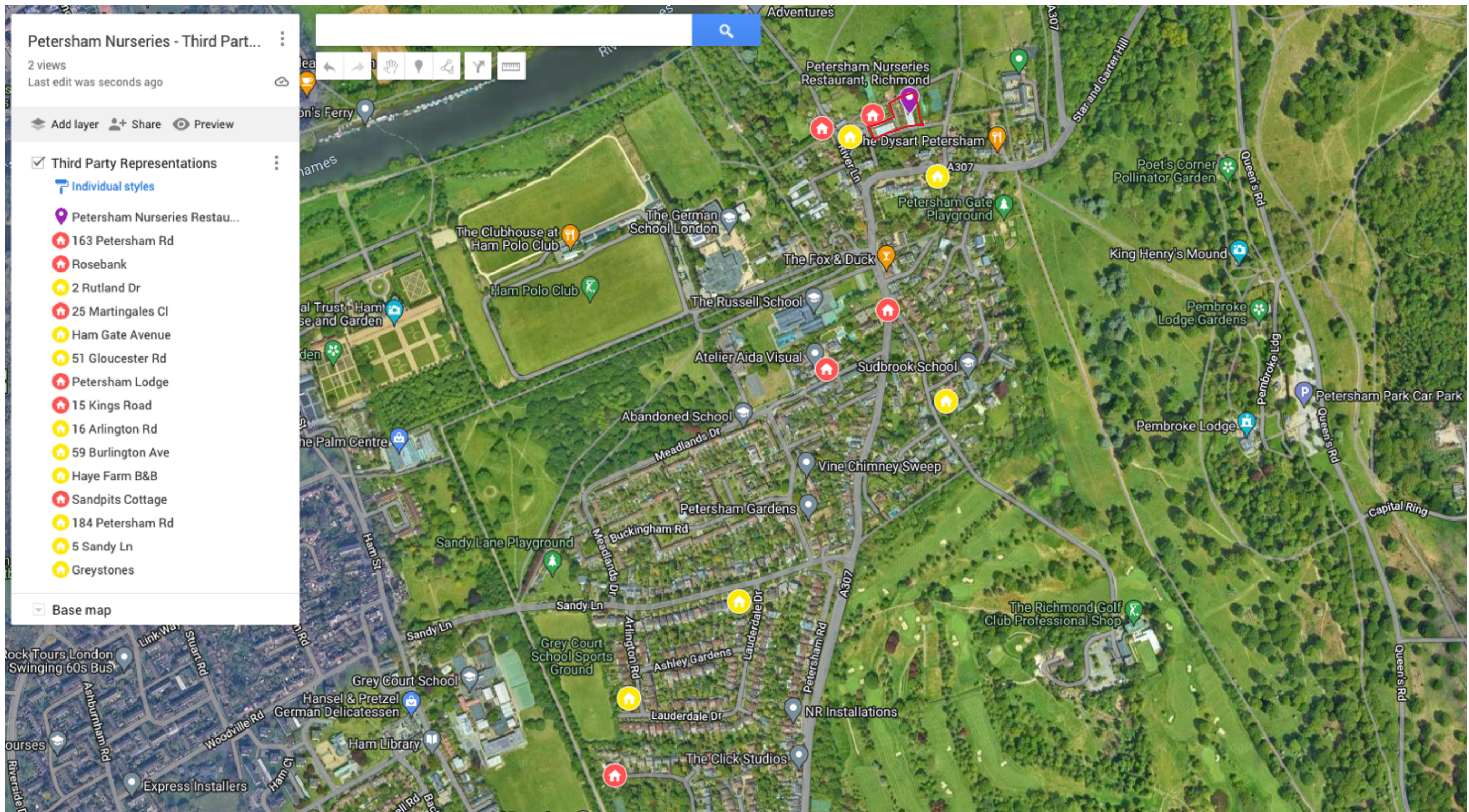
Paula Passos Carr  
Restaurant Manager

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PETERSHAM NURSERIES

Church Lane, off Petersham Road  
Richmond, TW10 7AB  
Registered No 738272 England & Wales  
VAT number 216 3911 79



## Appendix 2: Map of Third-Party Representations<sup>1</sup>



<sup>1</sup> Yellow = Representations of Support, Red = Representations of Objection